

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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)
In Re:) SIPA LIQUIDATION
)
BERNARD L. MADOFF INVESTMENT) No. 08-01789 (BRL)
SECURITIES LLC,) (Substantively
) Consolidated)
Debtor.)

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)
IRVING H. PICARD, Trustee of the)
Liquidation of Bernard L. Madoff)
Investment Securities LLC,)
)
Plaintiff,)

vs.) Adv. Pro. No.
) 09-01182 (BRL)

J. EZRA MERKIN, GABRIEL CAPITAL,)
L.P., ARIEL FUND LTD., ASCOT)
PARTNERS L.P., GABRIEL CAPITAL)
CORPORATION,)
)
Defendants.)

-----)
VIDEOTAPED DEPOSITION OF STEVE POMERANTZ, Ph.D.
New York, New York
July 8, 2015

Reported by: BONNIE PRUSZYNSKI, RMR, RPR, CLR
JOB NO. 95461

1 S. Pomerantz
2 was the director of quantitative research.
3 Those are just the boundaries of
4 those titles.
5 Q So between '92 and '97, did you
6 have responsibilities outside of fixed
7 income?
8 A Yes.
9 Q What responsibilities did you have
10 outside of fixed income during that period?
11 A There is the development of fund of
12 funds inside Weiss, Peck & Greer, primarily
13 the '40 Act fund of funds.
14 Also in that time period, I am
15 involved in the due diligence of acquisitions
16 that the firm is making for both traditional
17 and alternative investment managers. I am
18 involved in the due diligence that is being
19 performed of Weiss, Peck & Greer by other
20 parties.
21 I am also the chair of the asset
22 allocation committee during that time period.
23 Q That was from '92?
24 A That was from '94 to actually 2000,
25 I was the chair of the asset allocation

1 S. Pomerantz
2 that you were involved in creating did not,
3 during the '92 to 2000 time period, invest in
4 funds outside of the Weiss, Peck & Greer
5 portfolio. Is that right?
6 A That's correct.
7 Q Then when you say -- in connection
8 with developing the Weiss, Peck & Greer fund
9 of funds that invested in Weiss, Peck & Greer
10 hedge funds, did you do due diligence on the
11 Weiss, Peck & Greer hedge funds that you were
12 investing in?
13 A Yes, but my responsibility to
14 perform due diligence on the individual hedge
15 funds is actually independent of the creation
16 of this fund of funds. My role in the firm
17 is to actually be involved in the due
18 diligence of all of the hedge fund products
19 that we have and in the -- in new hedge funds
20 that we are going to acquire.
21 Q So you perform due diligence on
22 internally managed funds; is that right?
23 A Yes.
24 Q What did that involve?
25 A Pretty much the same framework that

1 S. Pomerantz
2 committee. And in that capacity, I am
3 interfacing with all of the equity products
4 as well.
5 Q The -- you said development of a
6 fund of funds at Weiss, Peck & Greer. Could
7 you describe that for me?
8 A Weiss, Peck & Greer had a -- I
9 would -- well, it varied over time. I mean,
10 initially, it was just one, and eventually,
11 it got up to about a dozen actual hedge funds
12 or what we will call hedge funds, but at some
13 point what Weiss, Peck & Greer did was take
14 those individual hedge funds and kind of
15 merge them into another product called a fund
16 of funds, that solely invested in Weiss,
17 Peck & Greer hedge fund products.
18 Ultimately, that's a product that
19 is being targeted to different investors than
20 the actual individual hedge funds themselves.
21 Q So, you were involved in creating
22 the product that then invested in the other
23 Weiss, Peck & Greer funds; is that right?
24 A Yes.
25 Q I take it that that fund of funds

1 S. Pomerantz
2 I have identified in the report. It just
3 means different things to different funds,
4 especially when I am right next-door to the
5 hedge fund and they are my partner. There is
6 different sets of information that you have.
7 But the framework, the template is pretty
8 much what we have described in the reports.
9 Q When you say "what we have
10 described in the reports," who do you mean by
11 "we"?
12 A Mr. Weingarten and myself.
13 Q So you used the five-piece
14 framework back then in the '92 to 2000 time
15 period?
16 A Yes.
17 Q And in your view, it's always been
18 a five-piece framework?
19 A I'm not -- not wedded to the number
20 per se. The -- the ideas, the actual things
21 that are being examined, that is -- that has
22 been pretty consistent in my memory of how
23 the industry operates. I think there is
24 probably some different groupings of these
25 ideas according to different people, but as

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1 S. Pomerantz
2 far as the substance of the issues being
3 evaluated, I started this job in 1992, and I
4 was sitting in meetings with Cowen
5 Associates, Russell Investments, Wilshire
6 Associates. Their job was to evaluate Weiss,
7 Peck & Greer, and this is the framework that
8 they are engaging in as early as 1992.

9 Q The -- have you ever described it
10 as a 4P or a 3P framework?

11 A I am sure I have. The number of
12 P's is somewhat amorphous. The substance
13 remains the same. I think it just depends
14 how you want to communicate.

15 Q The -- so, when you said you are
16 sitting next-door to people, and they were
17 your partners, how did that affect the due
18 diligence process?

19 A Well, due diligence ultimately is
20 going to be defined by the information that
21 you have available to you; right? The
22 framework is -- is defined, but your ability
23 to implement is a function of the information
24 that you have at the time. And with
25 different people, you have different

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1 S. Pomerantz
2 given situation.

3 So, in other words, somebody --
4 somebody may be in business for five years,
5 and they may have a track record, and I may
6 be able to analyze their historical track
7 record, but somebody else may just be out of
8 the box and be a totally new hedge fund, and
9 then they have no track record. So my
10 evaluation of their performance will mean
11 something different when I look at this
12 manager versus that manager, but the notion,
13 the concept of looking at performance is an
14 objective part of that process.

15 Q When you performed due diligence on
16 one of your partners as compared to
17 performing due diligence on a fund that you
18 were considering acquiring, did you do
19 anything differently?

20 A Well, again, if they are a partner,
21 if they are a part of Weiss, Peck & Greer, I
22 have access to all of their records. I know
23 their trading. I know what their
24 transactions are. I know what their trades
25 are. I can go talk directly to the head

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1 S. Pomerantz
2 information.

3 If I am acquiring somebody, if I am
4 negotiating with an outside hedge fund and I
5 am trying to acquire them, or I may be
6 talking to a hedge fund that has no track
7 record that doesn't exist, but somebody that
8 I want to ultimately seed and start up, or
9 somebody could be a partner of my -- Weiss
10 Peck & Greer is a partnership, so a lot of
11 the people who work there are partners, and
12 they have ongoing businesses that they have
13 been managing their funds for years.

14 So there is different levels of
15 information that I am getting from all of
16 these different people.

17 Q Would you agree that due diligence
18 is a flexible process?

19 A I guess I don't -- there are
20 aspects -- I don't know what you mean by the
21 process. I would like to think that the
22 process is objective and the process is well
23 defined by what Weingarten and I have said.
24 The actual implementation of it is going to
25 be constrained by the particulars of any

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1 S. Pomerantz
2 trader at Weiss, Peck & Greer and get
3 information.

4 If I am trying to acquire someone
5 and they are using Goldman Sachs as a prime
6 broker, well, I can talk to Goldman Sachs,
7 but Goldman Sachs is clearly not going to
8 tell me the same things that the head trader
9 at Weiss, Peck & Greer is going to tell me.

10 So, again, there is differences
11 based on every situation.

12 Q Why would the -- why would Goldman
13 Sachs not tell you the same things that the
14 head trader at Weiss, Peck & Greer would tell
15 you?

16 A Because Goldman Sachs is a private
17 company, and there are limits to what they
18 need to communicate to the public.

19 (Discussion held off the record.)

20 BY MR. STEINER:

21 Q The -- so, you said when you were
22 at Weiss, Peck & Greer, when you were
23 performing due diligence on your partners,
24 you had access to basically more information,
25 and a lot more information, than on a fund

1 S. Pomerantz
2 applied to every single investment, because
3 it couldn't be applied to every single
4 investment. Certain strategies lend
5 themselves to certain types of analyses, and
6 other strategies don't. And even strategies
7 that will lend themselves to a certain type
8 of investment might not be -- you might not
9 have the ability to implement them if you
10 don't have the data.

11 So, this is a report of the due
12 diligence that could have been performed at
13 that time based upon the data available at
14 that time regarding a strategy like this.

15 Q Maybe I just misunderstood
16 something, because that was a lengthy report,
17 and it was probably late when I was reading
18 it. But the -- I understood you to be
19 opining that these analytics were industry
20 standards that had to be applied during this
21 time period to due diligence of a hedge fund
22 or an investment advisor.

23 MR. SHEEHAN: Object to the form.

24 Q Did I miss something?

25 A That is not what I just answered

1 S. Pomerantz
2 you.

3 Q Okay. I'm talking about what I
4 understood your report to say, not what your
5 testimony was, so --

6 A No. My report discusses the due
7 diligence that could have been performed at
8 this time regarding an investment like BLMIS
9 for someone who had access to the data that
10 Mr. Merkin had access to. Had Mr. Merkin
11 chosen to engage in due diligence, according
12 to my objective framework, according to the
13 industry's objective framework, this is what
14 he could have discovered.

15 Q These are tests that he could have
16 run?

17 A I would like to call them tools,
18 just because that's what I am used to. But
19 yes, that's my -- I mean, there is a basket
20 of tools that are available to someone like
21 Mr. Merkin at this time. And these are --
22 these tools could be applied to that
23 investment.

24 There are other tools that could be
25 applied to other investments, but these are

1 S. Pomerantz
2 all tools that have direct application to a
3 BLMIS-type investment.

4 Q So, now let me make sure I
5 understand. If I understand correctly, what
6 you are saying is that the industry standard
7 was the framework, the five P's; is that
8 right?

9 A Yes.

10 Q In your opinion?

11 A Yes.

12 Q And then there are lots of
13 different ways to go about implementing,
14 developing the information you need in the
15 five different P's; is that right?

16 A I mean the five P's are the
17 objective standard, and then it is incumbent
18 on a fiduciary to accomplish the due
19 diligence into each of those P's to the
20 extent that data and tools are available, and
21 circumstances warrant.

22 Q What do you mean by "circumstances
23 warrant"?

24 A Well, let's take BLMIS as an
25 example. Perhaps what is being offered up as

1 S. Pomerantz
2 an explanation for the performance is this
3 notion of market timing. One can perform
4 objective assessment on that notion. Is that
5 what is going on in the portfolio? Is the
6 portfolio trying to engage in market timing?
7 And if it is, is it being successful or not
8 at doing that?

9 That is something that would apply
10 here. That will not apply to every hedge
11 fund. I just mentioned the WPG Software Fund
12 as an example. Market timing would not be an
13 issue. That portfolio was always 100 percent
14 invested. If it ever held cash, it's because
15 the portfolio manager did not have any
16 opportunities to invest in, but not because
17 he was trying to be defensive with respect to
18 how the market might perform.

19 Q And you said something about the
20 data that was available. Could you elaborate
21 on that for me?

22 A Sure. As an example of data that
23 was available to Mr. Merkin, I would cite
24 transaction records, actual confirmations of
25 trades and the transcription of those